

**AGREEMENT
BETWEEN
STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
AND
COUNTY SERVICE AREA 70, IMPROVEMENT ZONE J**

THIS AGREEMENT is made and entered into this 28th day of February, 2006, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as DEPARTMENT which includes the Department, its officers, agents, employees and contractors; and San Bernardino County Service Area 70, Improvement Zone J, hereinafter referred to as OWNER, which includes the Owner, its officers, agents, employees and contractors

RECITALS:

- A. WHEREAS OWNER owns, operates or maintains underground utility facilities, in the State of California; and
- B. WHEREAS In order to facilitate the planning, design and construction of DEPARTMENT'S projects and to ensure the safety of the traveling public, the horizontal and vertical location and/or apparent visual condition of underground utilities must periodically be confirmed. These activities and their results are known as "positive location", and are more commonly referred to as "potholes". Where referred to in this agreement, such positive location operations include but are not limited to: vacuum extraction excavation, electronic detection, and probing, external and internal video inspection; and
- C. WHEREAS in general, utility owners have been responsible for performing such positive location activities, with the cost of such activities apportioned as provided by California law, Master Contracts or Department's policies; and
- D. WHEREAS DEPARTMENT'S needs frequently require the positive location of underground utilities more expeditiously than Owner can readily or economically provide; and
- E. WHEREAS DEPARTMENT is willing to assume control of the operation and cost of such positive location of underground utilities on a test basis to facilitate Department's needs from time to time as provided herein; and to determine if assuming the cost and operation this work creates sufficient benefit to the Department to justify continuing the practice.

NOW THEREFORE, in consideration of the above, and in consideration of the terms, covenants and conditions herein set forth, the parties hereto mutually agree as follows:

1. This agreement is made and executed by the parties hereto pursuant and subject to the provisions of Sections 680.5 and 707.5 of the Streets and Highways Code. It shall govern exclusively the determination of the obligations and costs to be borne by each party hereto in regard to work described herein in lieu of determination under the provisions of Sections 673, 680 and 700 to 707, inclusive, of said Streets and Highways Code, as now or hereafter existing, or under any other laws applicable to said subject matter. This agreement shall apply throughout the State of California to all of the Department's projects and related activities. It is not intended to, and shall not, establish any precedent, principle, rule or guide to interpretation, as between the parties hereto after its termination or as between either of the parties hereto and any third part at any time, and may be terminated at any time as provided herein.
2. The work to be performed under this agreement is limited to the work necessary to positively determine the horizontal and vertical location and/or apparent visual condition of the Owner's utility facilities with the degree of accuracy necessary to meet the Department's requirements. All work under this agreement shall be preceded by the delivery of a written notification to OWNER by DEPARTMENT.
3. This agreement does not apply to the relocation, rearrangement, removal or protection of utility facilities.
4. When the work described in this agreement is performed by the DEPARTMENT, the cost of the work shall be borne by the Department. The OWNER shall provide confirmation in the field of the identity and typical characteristics (including size, material, contents, pressure or capacity) of Owner's exposed utility facility and related activities, including but not limited to, inspection services at no expense to the Department, in accordance with the Department's time schedule.
5. It is anticipated that the work described in this agreement will be performed by the DEPARTMENT through the services of a contractor. In those instances when the Department chooses not to perform the work, the Department will issue a "Notice to Owner" ordering the OWNER to diligently perform the work in accordance with the Department's reasonable time schedule included in the Notice to Owner, and the DEPARTMENT will bear the cost of the work per separate agreement if the work is completed within the Department's time schedule. The OWNER shall allocate sufficient staff and resources to meet all schedules established for the project design and construction work. Should the Owner not meet Department's schedule, the DEPARTMENT shall have the right and option to perform such work to maintain Department's schedule.
6. The OWNER may choose to perform certain positive location work itself, pursuant to prompt notification to Department of Owner's intention. When the Owner so elects to perform such work, the cost of the work shall be borne by the DEPARTMENT in the same amount as the unit cost for such work by the

Department's contractor for the District area. If no such contract exists at the time, cost shall be the most recent such contract cost for the District area. DEPARTMENT will issue a Notice to Owner ordering the OWNER to diligently perform the work in accordance with Department's reasonable schedule included in the Notice to Owner. The OWNER shall allocate sufficient staff and resources to meet all schedules established for the project design and construction work. Should the Owner not meet Department's schedule, the DEPARTMENT shall have the right and option to perform such work to maintain Department's schedule.

7. It is intended that all work under this agreement performed by the DEPARTMENT shall be performed using the vacuum extraction method, hand excavation or comparable methods acceptable to the OWNER and the DEPARTMENT. Electronic detection may also be used in conjunction with, and when confirmed by, vacuum extraction at the Department's option. Other machine methods may only be used to remove paving materials. Machine methods used by Department for any other purpose will require the concurrence and on-site observation of Owner.
8. OWNER grants to DEPARTMENT, immediately upon receipt of notification, in accordance with the Department's time schedule, permission to perform positive location of Owner's facilities within Owner's private rights of way, wherever located. OWNER retains the right to require reasonable controls and restrictions. Such controls and restrictions shall be promptly provided to the Department in writing.
9. Upon completion of the work performed under this agreement, DEPARTMENT shall restore the work site to as good a condition as that found when the work commenced.
10. DEPARTMENT shall defend, indemnify and hold OWNER harmless from any death, injury, or property claims made by any person which materially arise from work performed by the Department, its employees, agents and contractors pursuant to this agreement. OWNER shall defend indemnify and hold DEPARTMENT harmless from any death, injury, or property claims made by any person which materially arise from work performed by the Owner, its employees, agents and contractors pursuant to this agreement.
11. This agreement eliminates and replaces any previous agreement between the parties, or portions thereof, regarding positive location activities ("potholing").
12. This agreement may be amended, changed or altered by mutual consent of the parties hereto in writing.
13. This agreement may be terminated by either party upon ninety (90) days written notice.
14. Time shall be of the essence of this agreement.

FEB 28 2006

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

February 28, 2006

FROM: THOMAS L. SUTTON, Director
Special Districts Department

SUBJECT: UTILITY POSITIVE LOCATION AGREEMENT BY AND BETWEEN COUNTY
SERVICE AREA 70, IMPROVEMENT ZONE J (OAK HILLS) AND THE STATE
OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION

RECOMMENDATION: Acting as the governing body of County Service Area 70, Improvement Zone J (Oak Hills), approve **Agreement No. 06-174** with the State of California, Department of Transportation ("Department" as referenced in the agreement), that allows for the positive location of underground water utility facilities at the expense of the Department.

BACKGROUND INFORMATION: The Special Districts Department, Water and Sanitation Division, manages, operates and maintains water facilities in County Service Area 70, Improvement Zone J (CSA 70 J) that provide water service to the residents of the area. The California Department of Transportation owns, operates and maintains state highways within the CSA 70 J service area that incorporate CSA 70 J water facilities within or below the State's roadways.

In order to facilitate the design and construction of State roadway projects within the CSA 70 J territory, and to ensure the safety of the traveling public on these existing roadways, the State must confirm through an inspection process the horizontal and vertical locations of underground utilities. The confirmation process involves the "positive location," of the existing utilities through processes that could include vacuum extraction excavation, electronic detection, physical probing, and external/internal video inspection.

Approval of this agreement will authorize the State to perform the positive location inspections of CSA 70 J underground water facilities that are located within or below the State's roadways in accordance with its project time constraints at the expense of the State.

It is anticipated that the work described in the agreement will be performed by the State, at the State's expense, either through the services of a contractor or by contracting with CSA 70 J. Either party upon ninety (90) days written notice may terminate this agreement.

REVIEW BY OTHERS: This action has been reviewed and approved by County Counsel (Daniel B. Haueter, Chief Deputy, 387-5467) on February 21, 2006 and by the County Administrative Office, (Wayne Thies, Administrative Analyst, 387-5409) on February 16, 2006.

FINANCIAL IMPACT: Any expenses incurred by CSA 70 J for work performed in accordance with this agreement will be reimbursed by the State. There is no impact upon the County General Fund.

SUPERVISORAL DISTRICT(S): First

PRESENTER: Thomas L. Sutton 387-5967

cc: SDD-Oravets w/2 agreements
Department w/agree. c/o SDD
Auditor-Mejico w/agreement
IDS w/agreement
Risk Management
SDD-Sutton
Co. Counsel-Haueter
CAO-Thies
File w/agreement

mll

Record of Action of the Board of Supervisors
AGREEMENT NO. 06-174
APPROVED (CONSENT CALENDAR)

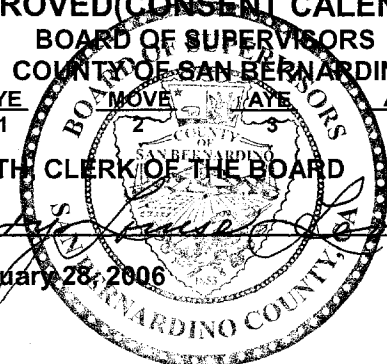
BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

MOTION	AYE	AYE	AYE	AYE	SECOND
	1	2	3	4	5

DENA M. SMITH, CLERK OF THE BOARD

BY

DATED: February 28, 2006



ITEM 043



District

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dept.	A	Contract Number 06-174	
County Department San Bernardino County County Service Area 70, Improvement Zone J				Dept.	Orgn.	Contractor's License No.
County Department Contract Representative James A. Oravets, Division Manager				Telephone		Total Contract Amount
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input checked="" type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date		Contract End Date		Original Amount
Amendment Amount						
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name			Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	

CONTRACTOR State of California, Department of Transportation

Federal ID No. or Social Security No. _____

Contractor's Representative Lorrie Wilson, Chief Utility Relocation Branch

Address _____ Phone _____

Nature of Contract: *(Briefly describe the general terms of the contract)*

Acting as the governing body of County Service Area 70, Improvement Zone J (Oak Hills), approve Agreement No. 06-174 with the State of California, Department of Transportation (Department), that allows for the positive location of water facilities at the expense of the Department.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)

County Counsel
Date 2/13/06

Reviewed as to Contract Compliance

Date 2/10/06

Presented to BOS for Signature

Department Head
Date 2-14-06

Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By